## UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES NEW YORK BRANCH OFFICE

**COUNTY WASTE OF ULSTER, LLC** 

and Case No. 2-CA-37437

LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 108

and

LOCAL 124, R.A.I.S.E. IUJAT Party in Interest

**COUNTY WASTE OF ULSTER, LLC** 

and Case No. 2-RC-22858

LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 108

and

LOCAL 124, R.A.I.S.E. IUJAT Intervener

## SUPPLEMENTAL DECISION

On February 11, 2009, the Board issued a Decision in the above captioned cases.<sup>1</sup> Although affirming most of my findings and conclusions issued on May 9, 2007, the Board remanded my finding that the Respondent had violated Section 8(a)(1) of the Act by granting a bonus to its employees. Although alleged by Local 108, Laborers in its Objections to the Election, this allegation was not contained in the complaint. The Board remanded the issue to determine, pursuant to *Pergament United Sales*, 296 NLRB 333, 334 (1989), whether the issue was "closely connected to the subject matter of the complaint and [was] fully litigated."

By letter dated February 24, 3009, Counsel for County Waste offered his opinion that the hearing should be reopened.

On March 9, 2009, I e-mailed the parties to ask them to advise me as to their respective positions.

On March 19, 2009, the General Counsel stated that he took the position that my findings were closely related to the original charge and that they had been fully litigated. He also opposed reopening the hearing.

<sup>&</sup>lt;sup>1</sup> Case No. 2-RC-22858 was severed and remanded to the Region for the purpose of holding a new election. That case is not before me.

On March 20, 2009, Counsel for the Charging Party, e-mailed me and stated, in substance, that he agreed with the General Counsel.

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By letter dated March 23, 2009, Counsel for County Waste reiterated his position that the "bonus" findings were not alleged in the Complaint and were not closely related to the charge. He further pointed out that the theory upon which the finding was made was never raised by any party. See, *New York Post*, 353 NLRB No. 30.

On March 25, 2009, I e-mailed the parties and among other things, requested the Respondent to indicate what factual issues it would present in the event that I reopened the hearing.

On April 1, 2009, counsel for County Waste stated that he would offer evidence regarding the date that the decision to pay the bonus was made and would offer to prove that employees were aware of that decision prior to its distribution. He further stated that he would offer testimony concerning certain settlement discussion which would be relevant to the timing of the decision to grant the bonuses. (Although relevant, this obviously could raise some evidentiary concerns).

On April 3, 2009, Counsel for the Charging Party stated that Local 108 would prefer to forgo litigation of the remanded issue and therefore desired to withdraw that aspect of the charge. (Since this was not alleged in the charge, he obviously meant to say that he wanted to withdraw this particular allegation and finding in the case).

By e-mail dated April 8, 2009, the General Counsel joined the Charging Party's request for withdrawal of the unalleged 8(a)(1) violation and requested that I remove from the decision the conclusion of law regarding that finding.

Having determined that the Respondent violated Section 8(a)(1) & (2) by allowing Local 124, (the Intervener), to distribute the bonuses, and having ordered that a new election be held, any additional findings regarding the decision to grant the bonuses would not affect the outcome of these cases. Nor would a positive or negative finding on that issue prejudice the rights of any employees.

Therefore, based on the foregoing, and on the entire record, I issue the following recommended amended Order. <sup>2</sup>

<sup>&</sup>lt;sup>2</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

## **ORDER**

5	I hereby withdraw my findings and conclusion that the Respondent violated the Act by granting the bonus. I further recommend that the finding that the Respondent violated Section 8(a)(1) by granting the bonus be vacated and dismissed.
	Dated at Washington D.C., May 1, 2009.
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15	Raymond P. Green Administrative Law Judge
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